

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:MAN:TL-N-6624-00  
FPetrino

date:

to: Paul Rinaldi, Territory Manager  
Attention: Leonor P. Simmons  
Case Manager, Group 1643

from: Area Counsel (CC:LM:FSH:MAN:1)

subject: [REDACTED] (F.K.A. [REDACTED])

[REDACTED], also F.K.A. [REDACTED]

EIN: [REDACTED]; and

[REDACTED]  
EIN: [REDACTED]

UIL # 6231.01-01

DISCLOSURE STATEMENT

This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum responds to your request of December 3, 2001 for written advice concerning whether a partnership, which has a corporation as a partner, qualifies as a partnership exempt from the TEFRA rules under the provisions of I.R.C. § 6231(a). The

advice in this memorandum is conditioned on the accuracy of the facts you presented to us. If you determine that these facts are incorrect, you should not rely on this advice.

This advice is subject to National Office review. That review might result in modifications to the conclusions contained herein. We will contact you to discuss the National Office's comments, if any, as soon as we hear from that office, which should be in approximately 10 days. In the meantime, you should consider the conclusions contained in this memorandum preliminary.

### ISSUES

1. Whether a partnership that has a limited liability company ("LLC") as a partner qualifies as a partnership exempt from the TEFRA rules under the provisions of I.R.C. § 6231(a)(1)(B).

2. Whether a partnership that has [REDACTED] corporations as partners qualifies for the small partnership exception to the TEFRA rules under the provisions of I.R.C. § 6231(a)(1)(B).

### CONCLUSION

1. A partnership that has as a partner an LLC which is a flow thru entity for U.S. tax purposes does not qualify as a partnership exempt from the TEFRA rules under the provisions of I.R.C. § 6231(a)(1)(B).

2. A partnership that has [REDACTED] corporations as partners is exempt from TEFRA only for tax years ending after August 5, 1997. For tax years ending on or before August 5, 1997, a partnership having corporate partners is not exempt from the TEFRA rules under the small partnership exception described in I.R.C. § 6231(a)(1)(B).

### FACTS

The paragraphs below describe the facts in this case as they were conveyed to us. If the facts are different from those stated herein, our analysis and conclusions may change. If you discover or obtain additional facts, or if the facts herein are inaccurate, please contact us immediately to discuss this advice.

[REDACTED], the successor in interest to [REDACTED] (" [REDACTED] "), filed a [REDACTED] U.S. Partnership Return of Income

("return") on [REDACTED]. [REDACTED] filed its [REDACTED] return on [REDACTED]. In [REDACTED], all [REDACTED] partners in the partnership were C corporations. In [REDACTED], in addition to [REDACTED] corporate partners, the partnership had an LLC as a partner. This LLC is an eligible entity under the provisions of Treas. Reg. § 301.7701-2(B), has not filed an election to be treated as a corporation under Treas. Reg. § 301.7701-3, and is considered a flow thru entity for U.S. tax purposes.

A second partnership, [REDACTED], filed its [REDACTED] and [REDACTED] tax returns on [REDACTED] and [REDACTED] respectively. For each year, all [REDACTED] partners in the partnership were domestic C corporations.

### DISCUSSION

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) provides that each partnership is treated as a separate entity and that determinations made in a partnership level proceeding are binding on all partners that are parties to the proceeding. See I.R.C. §§ 6221-6245. I.R.C. § 6221 provides that, except where otherwise provided..., the tax treatment of any partnership item... shall be determined at the partnership level.

Generally, the TEFRA procedures apply to any partnership required to file a return under I.R.C. § 6031. I.R.C. § 6231(a)(1)(A). However, I.R.C. § 6231(a)(1)(B) provides that the term "partnership" shall not include a "small partnership" which is defined as any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. The Taxpayer Relief Act of 1997 (P.L. 105-34) previously expanded this provision to include a C corporation as a qualified partner. This inclusion of a C corporation as a qualified partner is effective for tax years ending after August 5, 1997. For tax years ending on or before August 5, 1997, partnerships having a corporation as a partner do not qualify for the small partnership exception to the TEFRA rules. P.L. 105-34 continued the prohibition against flow thru entities as partners in a small partnership.

In the case of [REDACTED], the partnership does not qualify as a small partnership for the [REDACTED] tax year since it has as a partner an LLC that is classified as a flow-thru entity for U.S. tax purposes. [REDACTED] (the predecessor to [REDACTED]) does not qualify for the small partnership exception for the [REDACTED] year because it had a corporation as a partner and its tax year ended prior to August 5, [REDACTED]. Therefore, [REDACTED] are subject to the TEFRA rules for each of the years at issue.

██████████ qualifies for the small partnership exception to the TEFRA rules for both ██████ and ██████. It qualifies for the exception because all of its partners were either a qualified individual, C corporation or an estate of a deceased partner (in the instant case, all of the partners were domestic C corporations) and each of its tax years at issue herein ended after August 5, 1997.

If you have any questions concerning our advice, please contact Frederick Petrino at (212) 264-1595, ext. 294.

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& Healthcare:Manhattan)

By: \_\_\_\_\_  
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